

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 CHRIS LANGER,

11 Plaintiff,

12 vs.

13 MINH HANH THI HO, an individual  
14 and representative capacity as trustee;  
15 JOHN HO, in his individual and  
16 representative capacity as trustee;  
17 LIEM HOLSTON; and DOES 1-10,

Defendants.

CASE NO. 13cv2867-GPB(JLB)

**ORDER DENYING DEFENDANTS'  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT AS  
PREMATURE**

[Dkt. No. 25.]

18 Before the Court is Defendants' motion for partial summary judgment and for  
19 the Court to decline supplemental jurisdiction. (Dkt. No. 25.) Plaintiff filed an  
20 opposition on July 9, 2014. (Dkt. No. 40.) A reply was filed by Defendants on July  
21 22, 2014. (Dkt. No. 41.)

22 Plaintiff brought a second amended complaint against Defendants for violations  
23 of the Americans with Disabilities Act, California's Unruh Civil Rights Act, and  
24 California Disabled Persons Act. (Dkt. No. 19.) In their motion, Defendants argue  
25 that the injunctive relief claim is now moot since their expert on May 9, 2014 inspected  
26 the subject property and concluded that the facility met or exceeded all applicable  
27 standards for disability accessibility. (Dkt. No. 25-5, Schlottman Decl. at 2:19-26.)  
28 Therefore, since Plaintiff's claim for injunctive relief is now moot and there is no

1 continuing federal jurisdiction, Plaintiff's state law claims for damages are more  
2 appropriately adjudicated in California state court.

3 In opposition, Plaintiff argues that the Court should deny or continue the motion  
4 under Federal Rule of Civil Procedure Rule 56(d)<sup>1</sup> on the basis that the motion is  
5 premature since not only is there a discovery stay, but plaintiff has not yet been able  
6 to inspect the property. In reply, Defendants do not dispute that Plaintiff has not been  
7 able to inspect the property and concede that their motion for partial summary  
8 judgment cannot go forward without Plaintiff's inspection of the property. Therefore,  
9 in the reply, Defendants ask the Court to issue an order "(1) determining the discovery  
10 dispute attached hereto as Exhibit '11', and (2) requiring any desired inspection to take  
11 place in no more than 10 days, so that the MPSJ can be adjudicated as close to the  
12 current motion hearing date as possible . . . ." (Dkt. No. 41 at 2.)

13 While the parties had agreed to an inspection date of June 25, 2014, it did not  
14 come to fruition. Both parties point the finger at each other as to the reasons why  
15 Plaintiff was unable to inspect the property on June 25, 2014.<sup>2</sup> In their reply,  
16 Defendants ask the Court to determine the discovery dispute at issue attached as  
17 Exhibit 11; however, that document references a Joint Motion for Resolution of  
18 Discovery Dispute filed in another case, 13cv2721-CAB(NLS), with similar issues, but  
19 not filed in this case.

20 First, the Court notes that it cannot resolve an issue that was filed in another case

---

21 <sup>1</sup>Rule 56(d) provides:

22 (d) When Facts Are Unavailable to the Nonmovant. If a nonmovant  
23 shows by affidavit or declaration that, for specified reasons, it cannot  
24 present facts essential to justify its opposition, the court may:

- 25 (1) defer considering the motion or deny it;  
26 (2) allow time to obtain affidavits or declarations or to take discovery;  
27 or  
28 (3) issue any other appropriate order.

Fed. R. Civ. P. 56(d).


<sup>2</sup>The parties should have contacted the Magistrate Judge for assistance in resolving this discovery dispute.

1 and not before it. Moreover, the Court notes that on June 20, 2014, Defendants  
2 attempted to bring the matter before the Magistrate Judge by filing a document entitled  
3 "Qualified, Limited Objection to Site Inspection Demand." However, that document  
4 was struck on discrepancy by Magistrate Judge Burkhardt for failure to comply with  
5 local or chambers rules. (Dkt. No. 39.) Over a month has passed and neither  
6 Defendants nor Plaintiffs have not followed up with the proper procedure in order to  
7 present this discovery issue to the Magistrate Judge prior to the hearing on Defendants'  
8 motion for partial summary judgment.

9 Accordingly, the Court DENIES Defendants' motion for partial summary  
10 judgment as PREMATURE. The parties are directed to contact the chambers of  
11 Magistrate Judge Burkhardt to resolve the issue concerning inspection of the property  
12 and any relevant issues. Prior to contacting the Chambers of Magistrate Judge  
13 Burkhardt, the parties are instructed to read Judge Burkhardts's Civil Chambers Rules  
14 regarding the procedure to present discovery disputes before her. The Court vacates  
15 the hearing set for August 8, 2014.

16 IT IS SO ORDERED.

17  
18 DATED: August 1, 2014

19   
20 HON. GONZALO P. CURIEL  
21 United States District Judge  
22  
23  
24  
25  
26  
27  
28